IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.R. NO.49 Of 2000.
Judgment reserved on 26.7.2007.
Date of decision : 09.8.2007.

Bhupinder Singh and another. ……. Petitioners.

Vs.

Parmodh Singh and another. ……. Respondents.

Coram
The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the petitioners: Mr. K.D. Sood, Advocate.

For the respondents: Mr. G.D. Verma, Sr. Advocate, with
Mr. B.C. Verma, Advocate.

Surinder Singh, J :

Heard and perused the record.

In brief, the facts are that the plaintiffs alleged the breach of the ad-interim injunction order Ext.PA dated 12.9.1994, passed by the trial court on an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure with respect to the suit land.

It was alleged in the application that the respondents, who are defendants in the suit had defied the orders and started construction work on a part of the suit land, thereby changing its nature. No date regarding the alleged defiance has been mentioned.

According to the respondents, in reply they did not make any construction over the suit land, as alleged, however, proforma defendant Surender Singh carried out some minor

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

repairs on the already constructed portion of his own accord prior to the issuance of the injunction order. The defendant Parmod Singh had sustained the fracture of his leg and remained out of Nahan for his treatment. The defendants denied any alleged construction at their instance. The trial court had framed the following issues to resolve the controversy:-

1. Whether the respondents have willfully disobeyed the orders of the court as alleged? OPP.

2. Whether the petition is not maintainable as alleged? OPD.

3. Relief.

The parties led their evidence. On the basis of the evidence and after hearing the parties, the learned trial court found that the respondents as well as their brothers willfully disobeyed the orders of the court by having continued the construction on the suit property thus held both of them guilty and passed the impugned order to take them into custody forthwith and detain them in civil prison for a period of one month and their immovable property was ordered to be attached. Against this order, the respondents herein filed an appeal. Learned Additional District Judge, after reappraising the evidence on record, allowed the appeal and set-aside the order dated 30.7.1998, against which the instant revision petition has been filed.

The suit of the plaintiff qua the suit land was decreed on 26.3.99 for the relief of declaration with a consequential relief, for joint possession. The appeal of the defendants was dismissed and the second appeal (RSA No.103/2000) was also

dismissed and the judgment and decree passed by the Sub Judge remained intact throughout. Now only this application for alleged defiance of order survives.

In fact, the petitioners herein did not specify in the application under Order 39 Rule 2-A of the Code of Civil Procedure as to how and in what manner the respondents have changed the nature of the suit property, the particulars of violation were not specified. The first appellate court had noticed that the petitioners had given the evidence beyond the pleadings, which could not be looked into and further that the Local Commissioner who had visited the spot on 9.11.1994 and submitted his report Ext.AW2/D alongwith its rough notes and Naksha Mauka Nazari Ext.AW2/C, clearly stated that the construction was two months old which synchronized to the date on or before the injunction Ext.PA was issued. According to the Local Commissioner, when he visited the spot on 9.11.1994, some work on the 5th step was going on but he did not verify as to when the 57 feet long steps were completed. In the opinion of the learned trial court, completion of 5th step in the construction was of no consequence. The first appellate court has also considered the report of the police dated 20.12.1994, which was also not proved in accordance with law. The date of starting the construction as deposed by the witnesses of the petitioners varied from August to September, 1994. The defendant Parmod Singh was hospitalized for his fracture injury in his leg caused in an accident on 2.9.1994 and remained in PGI, Chandigarh till November, 1994. This fact has been admitted by Bhupinder Singh (AW1) and proved by the

defendants-respondents. The learned first appellate court had rightly observed that the evidence led by the petitioner was so jumbled, which could not prove their case and thus they have utterly failed to prove that the respondents raised the construction by changing the nature of the suit land by willfully defying the injunction order.

The learned counsel for the petitioners herein, could not convince as to how and in what manner, the impugned order passed by the first appellate court is wrong and illegal, which has caused material prejudice or miscarriage of justice.

As a matter of fact, the purpose of Rule 2-A of Order 39 is not to punish a person who has disobeyed the injunction order, but to enforce it. Only the willful disobedience invites the wrath of the penal action as envisaged in the said provisions.

In the instant case, the petitioners have failed to prove that the respondents have willfully disobeyed the injunction order. The plea taken by the respondents that his father Surender Singh, who had made minor variations in the proposed construction, that too before passing of the order, would not make the respondents herein liable for any breach of the impugned order.

Order 39 Rule 2-A of the Code of Civil Procedure has the penal consequences, unless the knowledge of the order of the court is proved, the breach thereof cannot be said to be willful. The impugned order was passed in the presence of counsel for the parties, it is not proved by the petitioner that the defendants had the knowledge of the impugned order,

when the breach is alleged, therefore, for the reasons and as detailed above, no interference is called for. Accordingly the revision petition is dismissed.

Parties are left to bear their own costs.

August 9th, 2007.
(Pds)

(Surinder Singh)
Judge.